Court File No.: CV-22-00030791-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff/
Moving Party

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL
DARLENE THOMPSON and JOHN DOE

Defendants/
Responding Parties

- and -

THE CORPORATION OF THE CITY OF WINDSOR,
ATTORNEY GENERAL FOR ONTARIO and THE DEMOCRACY FUND

Intervenors

SUPPLEMENTARY SUPPLEMENTARY MOTION RECORD

Dated: February 17, 2022

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LAWYER FOR THE INTERVENOR (FRIEND OF THE COURT),
THE DEMOCRACY FUND

INDEX

1. Affidavit of Gian Poalo Vescio

    A. Exhibit “A” – February 12, 2022 Press Release

    B. Exhibit “B” – February 17, 2022 Press Release and Twitter screenshot

    C. Exhibit “B” – Draft Notice of Action

2. Endorsement of the Honourable Chief Justice Morawetz dated February 11, 2022

3. Order of the Honourable Chief Justice Morawetz dated February 11, 2022

4. Endorsement of the Honourable Chief Justice Morawetz dated February 14, 2022

004

TAB 1

Court File No.: CV-22-00030791-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff/
Moving Party

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL
DARLENE THOMPSON and JOHN DOE

Defendants/
Responding Parties

- and -

THE CORPORATION OF THE CITY OF WINDSOR,
ATTORNEY GENERAL OF ONTARIO and THE DEMOCRACY FUND

Intervenors

AFFIDAVIT OF GIAN PAOLO VESCIO

I, Gian Paolo Vescio, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am General Counsel of the Automotive Parts Manufacturers' Association (hereinafter the "**APMA**"), and as such, have knowledge of the matters to which I hereinafter depose.

2. Pursuant to the Order of the Honourable Chief Justice Morawetz, dated February 11, 2022 (the "Order"), and specifically paragraph 10 of the Order, I caused a press release to be disseminated on the APMA's website on February 12, 2022 (the "Feb 12 Press Release"). The Feb 12 Press Release contains a brief description of the nature of the injunction in effect as of 7:00 p.m. on February 11, 2022, as well as a URL created by McTague Law Firm through which the Order and the Honourable Chief Justice Morawetz Endorsements can be viewed and downloaded.

The Feb 12 Press Release also indicates that the matter is scheduled to return before the Court on Friday, February 18 at 10:00 a.m. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the Feb 12 Press Release.

3. In keeping with the Order, and specifically paragraph 10 of the Order, I caused a press release to be disseminated on the APMA's website and Twitter account on February 17, 2022 at approximately 12:03 p.m. (the "**Feb 17 Press Release**"). The Feb 17 Press Release indicates that this matter is scheduled to return before the Court on Friday, February 18 at 10:00 a.m. The Feb 17 Press Release provides the public Zoom link for the hearing, as well as the URL created by McTague Law Firm through the Motion materials of the APMA and the City of Windsor can be viewed and downloaded. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of the Feb 17 Press Release and the Twitter screenshot.

4. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of a draft Notice of Action pursuant to APMA's undertaking given under rule 37.17 of the *Rules of Civil Procedure*.

5. I make this Affidavit in support of the within Motion and for no other or improper purpose.

SWORN REMOTELY by Gian Paolo Vescio in the City of Toronto, in the Province of Ontario, before me in the City of Windsor, in the County of Essex Province of Ontario, this 17th day of February, 2022.

A Commissioner, etc.

GIAN PAOLO VESCIO

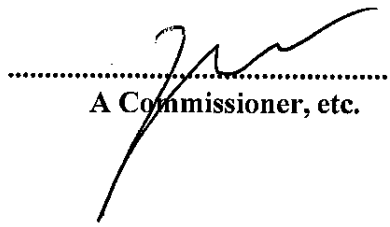
THIS IS EXHIBIT "A"

REFERRED TO IN THE AFFIDAVIT OF

GIAN PAOLO VESCIO

SWORN BEFORE ME THIS 17th DAY

OF FEBRUARY, 2022



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A Commissioner, etc.

apma.ca/2022/02/12/press-release-order-and-endorsement-of-chief-justice-morawetz-regarding-apma-v-jim-boak-et-al/

PRESS RELEASE: Order and Endorsement of Chief Justice Morawetz regarding APMA v Jim Boak et al

After hearings held on Thursday February 10 and Friday February 11, 2022 Chief Justice Morawetz of the Ontario Superior Court of Justice granted an injunction to restrain individuals from establishing a blockade, or in any way impeding access, to the Ambassador Bridge.

Effective 7:00 pm on Friday, February 11, 2022, any persons having notice of the Order granting the injunction are restrained and enjoined from impeding or blocking access to the Ambassador Bridge and indirect or direct approaching roadways and access points for ten (10) days.

People remain at liberty to engage in a peaceful, lawful and safe protest that does not impede or block access to the Ambassador Bridge and approaching roadways. The terms of the Order and any applicable law must be complied with.

The Automotive Parts Manufacturers' Association (APMA), as representative plaintiff, and intervener the City of Windsor, provided evidence regarding the dramatic local, national and international economic consequences of the ongoing blockade. The Ontario Attorney General intervened in support of the injunction, and the Canadian Vehicle Manufacturers' Association joined to support the APMA's request.

A order and endorsement may be found at: https://mctaguelaw-my.sharepoint.com/:f:/p/onedrive/ErlE2sIcoHBIhg_tODsToxoBg-UHosBsvyOFMu7fqIvoWQ?e=qZt6N

The matter is scheduled to return before the court on Friday, February 18th at 10:00 AM.

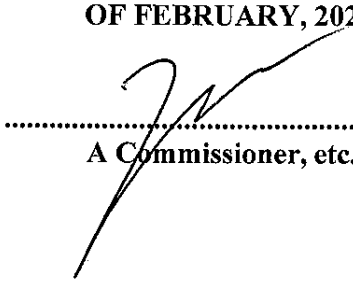
THIS IS EXHIBIT "B"

REFERRED TO IN THE AFFIDAVIT OF

GIAN PAOLO VESCIO

SWORN BEFORE ME THIS 17th DAY

OF FEBRUARY, 2022



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A Commissioner, etc.

← **Thread**

APMA Canada
@APMACanada

PRESS RELEASE: Ontario Superior Court Hearing Continues Friday

After hearings held on Thursday February 10 and Friday February 11, 2022 Chief Justice Morawetz of the Ontario Superior Court of Justice granted an injunction to restrain individuals from /1

12:03 PM · Feb 17, 2022 · Twitter Web App

View Tweet activity

Tweet your reply

APMA Canada @APMACanada · 3m
Replying to @APMACanada
establishing a blockade, or in any way impeding access, to the Ambassador Bridge.
Effective 7:00 pm on Friday, February 11, 2022, any persons having notice of the Order granting the injunction are restrained and enjoined from impeding or blocking access to the Ambassador /2

APMA Canada @APMACanada · 3m
Bridge and indirect or direct approaching roadways and access points for ten (10) days.
As provided in the Chief Justice Morawetz' Order, the hearing of a motion to continue the injunction Order will be held before the Court in Windsor by videoconference /3

APMA Canada @APMACanada · 3m
on February 18, 2022 at 10:00 am.
People remain at liberty to engage in a peaceful, lawful and safe protest that does not impede or block access to the Ambassador Bridge and approaching roadways. The terms of the Order and any applicable law must be complied with. /4

APMA Canada @APMACanada · 3m
The link to view and download Motion materials is found at:

mctaguelaw-my.sharepoint.com/:f:/p/onedrive...

The link to view and download the injunction Order is found at:
mctaguelaw-my.sharepoint.com/:f:/p/onedrive...

/5

APMA Canada @APMACanada · 3m
The hearing on Friday 18, 2022, may be viewed, commencing at 10:00 am, at the following Zoom link:

ca01web.zoom.us/j/68810320796?...

PRESS RELEASE: Ontario Superior Court Hearing Continues Friday

February 16, 2022

After hearings held on Thursday February 10 and Friday February 11, 2022 Chief Justice Morawetz of the Ontario Superior Court of Justice granted an injunction to restrain individuals from establishing a blockade, or in any way impeding access, to the Ambassador Bridge.

Effective 7:00 pm on Friday, February 11, 2022, any persons having notice of the Order granting the injunction are restrained and enjoined from impeding or blocking access to the Ambassador Bridge and indirect or direct approaching roadways and access points for ten (10) days.

As provided in the Chief Justice Morawetz' Order, the hearing of a motion to continue the injunction Order will be held before the Court in Windsor by videoconference on February 18, 2022 at 10:00 am.

People remain at liberty to engage in a peaceful, lawful and safe protest that does not impede or block access to the Ambassador Bridge and approaching roadways. The terms of the Order and any applicable law must be complied with

The link to view and download Motion materials is found at:

https://mctaguelaw-my.sharepoint.com/:f:/p/onedrive/EsCxY3Po1BlPhai1ReZUAUBBUVXTjeOcTRdz6of39-hDg?e=Iz90x0

The link to view and download the injunction Order is found at: https://mctaguelaw-my.sharepoint.com/:f:/p/onedrive/ErtEzsIcoHBIh9_tODsToxoBq-UH0sBsvyOFMu7fqIv0WQ?e=qZt6Na

The hearing on Friday 18, 2022, may be viewed, commencing at 10:00 am, at the following Zoom link:

https://ca01web.zoom.us/j/68810320796?pwd=VmoxNzE2UWRub2kzM2M2em55Ym1pQT09/

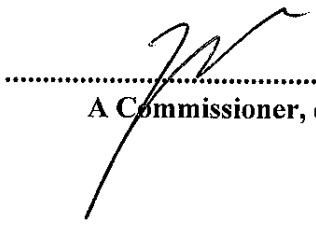
THIS IS EXHIBIT "C"

REFERRED TO IN THE AFFIDAVIT OF

GIAN PAOLO VESCIO

SWORN BEFORE ME THIS 17th DAY

OF FEBRUARY, 2022



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A Commissioner, etc.

Court File No.: CV-22-00030791-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL,
DARLENE THOMPSON and JOHN DOE

Defendants

- and -

THE CORPORATION OF THE CITY OF WINDSOR,
ATTORNEY GENERAL OF ONTARIO and THE DEMOCRACY FUND

Intervenors

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued by

Local registrar

Address of court office
245 Windsor Avenue
Windsor, Ontario
N9A 1J2

CLAIM

1. The Plaintiff claims:

   a. An interim, interlocutory and/or permanent injunction/mandatory order restraining and enjoining the Defendants, and any other person having notice, from impeding or blocking access to the Ambassador Bridge and indirect or direct approaching roadways and access points;

   b. A statutory injunction, pursuant to section 440 of the *Municipal Act,* 2001, restraining the Defendants, and any other person having notice, from contravening any by-law enacted by the City of Windsor, including but not limited to By-law 9148;

   c. Damages in an amount to be disclosed during the course of this proceeding on account of the Defendants' public nuisance, intentional interference with economic relations, inducement of breach of contract, intimidation, mischief and conspiracy;

   d. an Order under rule 10.01(1)(f) of the *Rules of Civil Procedure* authorizing the Plaintiff to bring this action as a representative Plaintiff on behalf of all members of the Automotive Parts Manufacturers' Association;

   e. Costs of this action; and

   f. Such further and other relief as to this Honourable Court seems just.

2. The Plaintiff, Automotive Parts Manufacturers' Association, as the representative plaintiff for its members, claims damages and injunctive relief against the Defendants as a result of their unlawful conduct in blocking and impeding access to the Ambassador Bridge in Windsor,

Ontario. As a result of the Defendants' actions, members of the APMA have suffered irreparable harm due to disruptions in the automotive supply chain.

Date:

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LAWYERS FOR THE PLAINTIFF

017

TAB 2

CITATION: AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION v. JIM BOAK, 2022 ONSC 1018
COURT FILE NO.: CV-22-00030791-0000
DATE: 2022-02-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

AND:

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER, LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL, DARLENE THOMPSON and JOHN DOE

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Michael A. Wills and Darwin E. Harasym*, for the Plaintiff

Jennifer King and Michael Finley, for the City of Windsor

HEARD: February 11, 2022

ENDORSEMENT

[1] I am satisfied that the test for an interim interlocutory injunction has been met such that an injunction is granted, effective February 11, 2022 at 7:00 p.m., pursuant to s. 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure* and s. 440 of the *Municipal Act, 2001*.

[2] An order to give effect to the foregoing is being prepared for my review and signature. Detailed reasons will follow.

Chief Justice G.B. Morawetz

Date: February 11, 2022

TAB 3

Court File No.: CV-22-00030791-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

CHIEF JUSTICE GEOFFREY B. MORAWETZ	)	FRIDAY, THE 11TH DAY
	)	
	)	OF FEBRUARY, 2022

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff/
Moving Party

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL
DARLENE THOMPSON and JOHN DOE

Defendants/
Responding Parties

- and –

THE CORPORATION OF THE CITY OF WINDSOR,
ATTORNEY GENERAL FOR ONTARIO

Interveners

ORDER

THIS MOTION, made by the Plaintiff for an interim interlocutory injunction pursuant to section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure*, and section 440 of the *Municipal Act, 2001*, was heard at Windsor on February 11, 2022 by videoconference.

UPON READING the Affidavits contained within the Motion Record of the Plaintiff dated February 10, 2022, the Supplementary Motion Record of the Plaintiff dated February 11, 2022, and the Motion Record of The Corporation of the City of Windsor dated February 11, 2022,

the Affidavit of Jason Bellaire sworn February 11, 2022, the Affidavit of Jason Ward Reynar sworn February 11, 2022, the Affidavit of Adam Blake-Gallipeau sworn February 11, 2022, and the Affidavit of Dr. Clifford Rosen sworn February 11, 2022, and upon hearing oral arguments of counsel for the Automotive Parts Manufacturers' Association, The Corporation of the City of Windsor, the Attorney General of Ontario, The Democracy Fund, John Doe, and with Kristian Langenfield making oral arguments on behalf of himself, with no one attending for the Defendants or any other any person having an interest in this matter, although duly served in accordance with the Endorsement of this Court dated February 11, 2022.

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today.

2. **THIS COURT ORDERS** that the Plaintiff is authorized to bring this Motion and the underlying proposed proceeding on behalf of all members of the Automotive Parts Manufacturers' Association pursuant to Rule 10.01(1)(f) of the *Rules of Civil Procedure*.

3. **THIS COURT ORDERS** that an interim interlocutory injunction is granted, effective February 11, 2022, at 7:00 PM, pursuant to section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure* and section 440 of the *Municipal Act, 2001*.

4. **THIS COURT ORDERS** that the Defendants and any persons having notice of this Order are hereby restrained and enjoined from impeding or blocking access to the Ambassador Bridge

and indirect or direct approaching roadways and access points for ten (10) days from the date of this Order.

5. **THIS COURT ORDERS** that any police officer with the Windsor Police Service, the Ontario Provincial Police, and any other police authority (the "Police"), shall have authorization to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.

6. **THIS COURT ORDERS** that the Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways.

7. **THIS COURT ORDERS** that the Police shall retain discretion:

   a. as to the timing and manner of enforcement of this Order, and specifically retained discretion as to the timing and manner of arrest and removal of any person pursuant to this Order;

   b. to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provision of this Order, upon that person agreeing to abide by this Order; and

   c. and to lay any charges or take any other lawful action.

8. **THIS COURT ORDERS** that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey this Order

9. **THIS COURT ORDERS** that the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest, that does not impede or block access to the Ambassador Bridge and approaching roadways. For greater certainty, the terms of this Order and any applicable law must be complied with.

10. **THIS COURT ORDERS** that notice of this Order shall be given by the creation of a URL whereby this Order can be viewed and downloaded, with the Plaintiff, The Corporation of the City of Windsor, and the Attorney General of Ontario issuing press releases containing the URL linking to the Order and the date, time and location of the hearing date contemplated in paragraph 14 of this Order.

11. **THIS COURT ORDERS** that notice of this Order may be given in the following manners:

a. by posting copies of this Order in or around the City of Windsor;

b. reading the Order to any person, including but not limited to reading the Order over an amplification system;

c. publishing this Order online; and

d. any other manner deemed appropriate by the parties or the Police.

12. **THIS COURT ORDERS** that this Order shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

13. **THIS COURT ORDERS** that costs of this Motion shall be in the cause, subject to the Orders granting the interveners standing.

14. **THIS COURT ORDERS** that the parties and any person having an interest in this matter shall appear before the Court in Windsor by videoconference on February 18, 2022 at 10:00 am for the hearing of a motion to continue this Order.

CHIEF JUSTICE GEOFFREY B. MORAWETZ

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT WINDSOR

ORDER

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DARWIN E. HARASYM
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McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9

LAWYERS FOR THE PLAINTIFF

Our File: 80695

TAB 4

CITATION: AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION v. JIM BOAK, 2022 ONSC 1001
COURT FILE NO.: CV-22-00030791-0000
DATE: 2022-02-14

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff/Moving Party

AND:

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER, LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL, DARLENE THOMPSON and JOHN DOE

Defendants/Responding Parties

AND:

THE CORPORATION OF THE CITY OF WINDSOR, ATTORNEY GENERAL FOR ONTARIO and THE DEMOCRACY FUND

Intervenors

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Michael A. Wills and Darwin E. Harasym*, for the Plaintiff

Jennifer King, Michael Finley and Bevin Shores, for the Intervenor, the Corporation of the City of Windsor

Joshua Hunter and Padraic Ryan, for the Intervenor, the Attorney General of Ontario

Alan Honner and Daniel Santoro, for The Democracy Fund

Antoine d'Ailly and James Kitchen, for Citizens for Freedom

Kristian Langenfeld, Self-Represented

Lyall Tryst, Self-Represented

HEARD and DETERMINED: February 11, 2022

REASONS RELEASED: February 14, 2022

ENDORSEMENT

[1] At the conclusion of the hearing of this motion on February 11, 2022, I released the following endorsement:

> [1] I am satisfied that the test for an interim interlocutory injunction has been met such that an injunction is granted, effective February 11, 2022 at 7:00 p.m., pursuant to s. 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure* and s. 440 of the *Municipal Act, 2001*.
>
> [2] An order to give effect to the foregoing is being prepared for my review and signature. Detailed reasons will follow.

[2] These are the reasons.

[3] Commencing on February 7, 2022, a protest has obstructed the intersection of Huron Church Road and College Avenue leading to the Ambassador Bridge (the "Bridge") in Windsor, Ontario. The Protesters have parked multiple vehicles on city streets, blocking traffic from crossing the Bridge through the primary entrance. Since approximately February 9, 2022, Protesters have also blocked the secondary Bridge entrance located on Wyandotte Street West. The Protest is said to be "in solidarity with similar protests in Ottawa" and relates to COVID-19 restrictions.

[4] The Plaintiff, the Automotive Parts Manufacturers' Association ("APMA"), supported by the Intervenors, the Corporation of the City of Windsor (the "City") and the Attorney General of Ontario ("Attorney General") bring this motion for an interim interlocutory injunction pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and/or a statutory injunction under s. 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25 to restrain and enjoin the Defendants and any person having notice of the Order from impeding or blocking access to and from the Bridge.

[5] This motion was originally returnable on February 10, 2022, on a without notice basis. I adjourned the matter until 12 noon on February 11, 2022 so that the matter could be brought to the attention of the Defendants.

[6] I directed the Plaintiff and the City to issue a press release, providing details with respect to the scheduled time of this motion and details enabling the Defendants to access this virtual court hearing. I am satisfied that there has been sufficient publicity such that this matter has been brought to the attention of the Defendants.

[7] The named Defendants did not attend the motion. Other interested parties made submissions in opposition to the motion, though they were not added as intervenors.

[8] The issue to be decided on this motion is as follows.

[9] Should an interim interlocutory injunction under s. 101 of the *Courts of Justice Act* and/or a statutory injunction under s. 440 of the *Municipal Act, 2001* be granted to prevent the Defendants and the other Protesters from impeding access to the Bridge?

[10] At the outset, it is necessary to set out what this proceeding is about and, perhaps more importantly, what this proceeding is not about.

[11] This proceeding concerns a request for immediate injunctive relief to restrain the Defendants from establishing a blockade, or in any way impeding access both to and from the Bridge.

[12] This proceeding does not concern the actions of the Federal Government or the Ontario Government with respect to COVID-19 restrictions. In addition, this proceeding does not concern any issue relating to the efficacy of any COVID-19 vaccine or the appropriateness of any COVID-19 mandate.

[13] It is also necessary to state that Canada is a democratic society that is governed by the rule of law. The *Canadian Charter of Rights and Freedoms* sets out various rights and freedoms that all of us in Canada enjoy. It does not provide constitutional protection for illegal activity or conduct, nor are the rights and freedoms set out in the *Charter* absolute. The extent of an individual right or freedom has to be measured against its effect on other members of the community and *their* rights and freedoms.

[14] The APMA, the City and the Attorney General do not suggest that the Protesters have no right to protest or express their views. They argue that the Protesters' rights to freedom of expression, assembly and association do not include blocking or impeding one of the main critical economic arteries between Windsor and Detroit, causing significant economic harm to the automotive industry and a profound negative impact on Windsor and its community, schools, residents, students and businesses.

[15] In an urgent case, a motion may be made before the commencement of proceedings on the moving party's undertaking to commence the proceeding forthwith.

[16] I am satisfied that this is an urgent matter and the Plaintiff has provided such an undertaking.

Evidence

[17] The Plaintiff and the City have filed numerous affidavits.

[18] Mr. Flavio Volpe, President-elect of the APMA, states that the APMA is a national association representing original equipment manufacturer ("OEM") producers of parts, equipment, tools, supplies, technology and services for the worldwide automotive industry. Mr. Volpe states that as of 2020, the automotive sector accounted for $16 billion worth of investment in Canada and provided 117,000 direct employment jobs and approximately 370,000 in indirect jobs. He also states that the Detroit-Windsor crossing represents the highest number of loaded truck containers crossings annually. He estimates that approximately $100 million worth of parts cross the border every day between the United States and Canada. He estimates that the blockade is costing $50 million per day and that this cost will be directly felt by Canadian/Ontario/Windsor companies and has already resulted in shutdowns and partial layoffs at companies that APMA represents. Mr. Volpe also states that the APMA represents 178 members and specifically represents 19 taxpayers directly in the City of Windsor, and in total 15 additional companies in the surrounding region.

Mr. Volpe concludes by stating that the APMA undertakes to forthwith commence an action for damages against the Defendants and any other persons that may be subsequently identified.

[19] Mr. Brian Kingston, President and Chief Executive Officer of the Canadian Vehicle Manufacturers Association ("CVMA") also filed an affidavit. The CVMA represents automotive manufacturers with operations in Canada, including General Motors of Canada Co., Ford Motor Co. of Canada, Limited and Stellantis (FCA Canada, Inc.). Mr. Kingston states that CVMA members use the Bridge every day for vehicle and parts manufacturing operations. Mr. Kingston states that the current blockade has significantly disrupted, reduced and in some cases has stopped vehicle assembly operations at multiple assembly plants in Canada and the United States. Further, plants in Windsor and Oakville are currently running at reduced capacity because of parts shortages caused by the blockade. At Stellantis, shifts were negatively affected in both Brampton and Windsor. He states that the disruptions in plant shortages caused by the blockade at the Bridge have cost and continue to cost CVMA members immeasurable sums of money.

[20] Mr. Brayden Boughner, an articling student at McTague Law Firm LLP, lawyers for the Plaintiff, stated that he commenced a search for individuals who had been identified as participants in the Protest at the Bridge. He confirmed the following individuals to be participants: Manbae Singh-Gall, Leo Lucio, Lori Inverarity, Jim Boak, Darlene Thompson, Joanne Callaway, Hilda Fisher and Gil Ponte.

[21] Mr. Jason Reynar also swore an affidavit. Mr. Reynar is the Chief Administrative Officer of the City. Mr. Reynar states that by-law number 9148 is a by-law to regulate traffic within the limits of the City. Sections 7(1)(a) and 12 of this by-law provide as follows:

> 7(1)(a) No operator of the vehicle shall permit such vehicle to remain upon or be driven upon or along any street so as to block or obstruct traffic.
>
> 12. No person shall obstruct, encumber, injure or foul any highway or portion thereof.

[22] In a supplementary affidavit, Mr. Reynar comments on the impact of the Protest:

> (i) There are over 1,000 automotive manufacturers in the Windsor-Essex region representing more than $4.5 billion in annual GDP (30% of regional GDP). The manufacturing sector employs some 36,800 people.
>
> (ii) These businesses rely on trans-border shipping across the Bridge.
>
> (iii) These businesses are part of the Windsor community and in addition to providing employment, they support charities and sponsor local events and activities.
>
> (iv) The Bridge serves as an important travel corridor for many Windsor residents.
>
> (v) Access routes to the Bridge pass through streets lined with small businesses as well as residential areas.

(vi) In the immediate 2 km radius surrounding the blockade, there were 24,925 residents as of 2016. The campus of the University of Windsor is adjacent to Bridge Plaza and Huron Church Road. Two schools are less than 2 km from the Bridge and Hotel Dieu Grace Hospital is 3 km away.

(vii) At the time he swore the affidavit, the Protest has blocked all Canada bound traffic and severely limited US bound traffic.

(viii) The Protest has resulted in business closures, layoffs and school closures and has impeded the City's ability to deliver crucial services, including fire and Emergency Medical Services.

[23] Mr. Jason Bellaire, Deputy Chief of the Windsor Police Service, states that from Monday, February 7, 2022 through to Thursday, February 10, 2022, he attended, as part of his official police duties, a public demonstration at the intersection of College Avenue and Huron Church Road in the City. This location forms the primary entrance and exit from the Bridge from Detroit (the "primary location").

[24] Deputy Chief Bellaire attended at this location and also reviewed the location remotely by live video footage on multiple occasions and observed numerous unknown and unnamed persons who he referred to as the "Protesters" and stationary vehicles occupy and block the primary entrance and exit from the Bridge. He states that the Protesters and vehicles parked on the roadways effectively formed a blockade of the primary entrance and exit of the Bridge. The blockade resulted in the complete closure of all Canada-bound vehicular traffic from the Bridge and severely limited U.S.-bound vehicular traffic on the Bridge to only the secondary Bridge entrance located on Wyandotte Street West in the City. Deputy Chief Bellaire went on to state that at some point during the evening hours of February 9, 2022 or the early hours of February 10, 2022, unnamed persons and vehicles intermittently blocked the secondary bridge entrance on Wyandotte Street (the "secondary location"). As of the time that he swore the affidavit on February 10, 2022, Deputy Chief Bellaire states that all access and exit to and from the Bridge had been obstructed by the Protesters.

[25] In addition, Deputy Chief Bellaire states that he and other Windsor Police Service officers have attended at both the primary and secondary location access points on multiple occasions from February 7, 2022 through to February 10, 2022 and asked the protesters blockading the Bridge entrances and exits to disperse to end the blockade of the highway and access to the Bridge. These efforts have been unsuccessful and the blockade was in effect at the time of his swearing of the affidavit.

[26] Deputy Chief Bellaire concludes by stating that the Protesters at both the primary and secondary locations are blocking a highway, namely the intersection of College Avenue and Huron Church Road, and Wyandotte Street West immediately adjacent to the Bridge and are thereby causing a disturbance by impeding members of the public and vehicular traffic to and from the Bridge. Deputy Chief Bellaire states that he believes that the actions of the protesters are contrary to provisions of the *Criminal Code*, R.S.C. 1985, c. C-46, specifically ss. 175(1), 180(2), 430(1)(c)(d), and 423(1)(g).

[27] In response, The Democracy Fund filed the affidavit of Adam Blake-Gallipeau, who is a lawyer with The Democracy Fund. The mandate of The Democracy Fund includes protecting and preserving constitutional rights in Canada through public education and litigation. Mr. Blake-Gallipeau observed the secondary entrance to the Bridge on the morning of February 11, 2022 and stated that it is impeded by two or three motor vehicles.

[28] Further, during argument, I was asked to relax certain rules of evidence and to permit reference being made to the affidavit of Dr. Clifford Rosen, to which was attached a number of photographs purporting to have been taken on February 11, 2022 between 2:00 p.m. and 3:15 p.m. at the intersection of Huron Church Road and College Avenue.

[29] I then asked Ms. King, as an officer of the court, to see if she could provide assistance to the court in response to representations being made to the effect that there was no complete blockade. Ms. King made inquiries and reported that, save and except for allowing emergency vehicles to pass, the Protesters continued to block the primary location and the Wyandotte Street West location was only open intermittently.

Analysis

[30] In preparing these reasons, I have reviewed and considered the following cases: *Attorney General of Ontario v. Trinity Bible Chapel et al.*, 2021 ONSC 740; *Batty v. Toronto (City)*, 2011 ONSC 6862; *Caledon (Town) v. Darzi Holdings Ltd.*, 2019 ONSC 5255; *Canadian National Railway Company v. John Doe*, 2020 ONSC 3998; *Canadian National Railway Company v. Doe*, 2020 ONSC 4152; *Canadian National Railway Company v. Doe et al.*, 2013 ONSC 115; *Canadian National Railway Company v. Plain et al.*, 2012 ONSC 7356; *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139; *Cytrynbaum v. Look Communications Inc.*, 2013 ONCA 455; *Grand Financial Management Inc. v. Solemio Transportation Inc.*, 2016 ONCA 175; *Hamilton (City) v. Loucks* (2003), 232 D.L.R. (4th) 362 (Ont. S.C.); *MacMillan Bloedel Ltd. v. Simpson* (1994), 113 D.L.R. (4th) 368 (B.C.C.A.); *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048; *Montreal (City) v. 2952-1366 Quebec Inc.*, 2005 SCC 62; *Newcastle Recycling Ltd. v. Clarington (Municipality)*, [2005] O.J. No. 5344 (C.A.); *Oglaza v. J.A.K.K. Tuesdays Sports Pub Inc.*, 2021 ONSC 7473; *Ontario (Attorney) v. Paul Magder Furs Ltd.* (1992), 10 O.R. (3d) 46 (C.A.); *R. v. Banks*, 2007 ONCA 19; *R. v. The Church of God (Restoration) Aylmer*, 2021 ONSC 3452; *R.W.D.S.U. Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.J. No. 17; *Ryan v. Victoria (City)*, [1991] 1 S.C.R. 201; *Sobeys Capital Inc. v. Sentinel (Sherbourne) Land Corp.*, [2014] O.J. No. 5998 (S.C.); *The Corporation of the City of Brantford v. Montour et al.* [indexed as *Brantford (City) v. Montour*], 2010 ONSC 6253; *The Township of Amaranth v. Ramdas*, 2020 ONSC 2428; *Township of King v. 2424155 Ontario Inc.*, 2018 ONSC 1415; *Zexi Li v. Chris Barber et al.* (7 February 2022), Ottawa, CV-22-00088514-00CP (Ont. S.C.).

[31] The evidence provided by the moving parties is overwhelming and clearly establishes that:

(i) the use of the Bridge is of vital importance to the residents and businesses in the immediate geographic area;

(ii) since Monday, February 7, 2022 and continuing up to and including Friday, February 11, 2022, the protest has escalated to the point where the blockade has resulted in the closure of Canada-bound traffic and has severely limited U.S.-bound traffic;

(iii) the protests and the blockade have had a significant negative impact on the residents and businesses in the immediate geographic area and numerous by-laws of the City have been breached; and

(iv) the protests and the blockade have had a significant negative impact on the automotive sector in a geographic range that is far beyond the Windsor area.

[32] The evidence provided by Mr. Blake-Gallipeau and Dr. Rosen falls far short of establishing that there is no blockade.

[33] Section 101 of the *Courts of Justice Act* provides that an interlocutory injunction or mandatory order may be granted where it appears to a judge of the court to be just or convenient to do so.

[34] The test for an interim injunction is clearly set out by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney-General)* at paras. 77-80. The test requires the moving party to demonstrate that:

(a) there is a serious issue to be tried;

(b) irreparable harm will result if the relief is not granted; and

(c) the balance of convenience favours the moving party.

[35] With respect to injunctive relief under s. 440 of the *Municipal Act, 2001,* the statutory injunction test is different. It is narrower. Municipalities are often given statutory authorization to seek an injunction to restrain breaches of by-laws. The nature and extent of the court's discretion will turn on the terms of the statute. In such cases, the moving party will not ordinarily have to establish inadequacy of damages or irreparable harm and that the balance of convenience favours the granting of the injunctive relief.

[36] In this case, the moving parties have satisfied the broader *RJR-MacDonald* test for an injunction under s. 101 of the *Courts of Justice Act* and consequently, it is not necessary to address issues relating to the statutory test in detail.

A. Interim Injunction Under Section 101 of the *Courts of Justice Act*

a. Serious issue to be tried

[37] The threshold to satisfy this requirement is low and should be determined on the basis of common sense and an extremely limited review of the case on the merits: *RJR-MacDonald Inc.*,

at para. 78. So long as the claim is not frivolous or vexatious, this factor of the test will generally be satisfied: *RJR-MacDonald Inc.*, at paras. 44-56, 78.

[38] The APMA, the City and the Attorney General have raised a serious issue to be tried by demonstrating that the Protesters have blocked and impeded access to the Bridge. The moving parties have demonstrated a number of causes of action that are neither trivial nor vexatious, including:

(i) A claim in public nuisance. An individual may bring a private action in public nuisance by pleading and proving special damage. Such actions commonly involve allegations of unreasonable interference with a public right of way, such as a street or highway: see *Ryan*, at para 52; *Chessie v. J. D. Irving Ltd.* (1982), 140 D.L.R. (3d) 501 (N.B.C.A.). I accept the evidence submitted by the APMA and find that they have raised a serious issue as to whether the Protesters' conduct has caused special damage in the approximate sum of $600 million to the automotive industry in Canada.

(ii) A claim in intentional interference with economic relations, also known as the "unlawful means" tort. The three elements of the test for this tort, as set out in *Grand Financial Management Inc.* at para. 62, are seriously raised. I accept the evidence submitted by APMA and find that they have raised a serious issue as to whether a tort has been committed, namely, that by blockading and impeding access to the Ambassador Bridge, there is a serious issue with respect to whether the Protestors have intended to injure APMA's economic interest by unlawful means through violations of the City of Windsor's by-laws, including but not limited to ss. 7(1)(a) and 12 of by-law number 9148. s. 426 of the *Municipal Act, 2001*, s. 132 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 and various provisions of the *Criminal Code*, including ss. 175(1)(a)(iii), 180(2)(b), 430(1)(c) and (d), and 423(1)(g).

[39] The APMA, the City and the Attorney General have clearly demonstrated that there is a serious issue to be tried with respect to whether damages have been suffered, and will continue to be suffered, as a result of the Protesters' nuisance, intentional interference with economic/contractual relations, and other potential torts. The suggestion that the APMA, the City and the Attorney General have failed to demonstrate a serious issue to be tried was not credibly advanced by the parties opposing the motion.

[40] Injunctions enforcing public rights and public laws, including municipal by-laws, are readily granted: see *Caledon (Town*).

b. Irreparable harm

[41] The second element of the *RJR-MacDonald* test, whether the moving parties will suffer irreparable harm if the injunction is not granted, has also been clearly met.

[42] What must be established on this part of the test is whether refusing to grant an injunction will cause harm that cannot be remedied at some later stage. "Irreparable harm" refers to the nature

of the harm suffered, rather than its magnitude. "It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other": *RJR-MacDonald Inc.,* at para. 59.

[43] The parties arguing on behalf of the Protesters argue that granting the injunction would result in irreparable harm being suffered by the Protesters by striking at their fundamental rights to freedom of expression, freedom of peaceful assembly and freedom of association under the *Canadian Charter of Rights and Freedoms*. I disagree.

[44] The APMA, the City and the Attorney General have clearly demonstrated the irreparable harm they have already suffered and that they will continue to suffer if the injunction is not granted.

[45] A review of the evidence clearly establishes the extent of the irreparable harm already caused, which has put the economy at risk. I accept the submissions of counsel to APMA and the Attorney General that, in these circumstances, it will be virtually impossible to recover damages from the Protesters. Beyond the specific irreparable harm to the automotive industry, the evidence establishes adverse impacts on the employment of members of the community, children's education, the community's access to critical services, the community's ability to access work, education and family in Detroit and the reputation of the City as a place to live, work and invest.

[46] There is no question that the Protesters' illegal blockade of the Bridge has caused and will continue to cause irreparable harm to the City, the residents of the City, the automotive industry, the businesses of Windsor and our economy if their unlawful conduct is permitted to continue.

c. Balance of convenience

[47] The third factor, the balance of convenience, considers which of the parties will suffer the greater harm from the granting or refusal of an interlocutory injunction pending a decision on the merits.

[48] The APMA, the City and the Attorney General do not seek to prohibit the right of the Protesters to express their views or exercise their rights. They are seeking to prohibit the Protesters' unlawful activity, which includes preventing and obstructing the public's access to the Bridge.

[49] The Protesters' claim of irreparable harm to their *Charter* rights if they are enjoined from committing unlawful acts does not outweigh the harm caused by those unlawful acts. The Protesters have no legal right to block or impede access to the Bridge. As Brown, J. (as he then was) said of the protesters blockading a Toronto-Montreal main railway line in *Canadian National Railway Co. v. Doe,* 2013 ONSC 115, at para. 11:

> … While expressive conduct by lawful means enjoys strong protection in our system of governance and law, expressive conduct by unlawful means does not. No one can seriously suggest that a person can block freight and passenger traffic on one of the main arteries of our economy and then cloak himself with protection by asserting freedom of expression. The Canadian Charter of Rights and Freedoms does not offer such protection …

[50] This statement is equally applicable to this blockade.

[51] There is no doubt that freedom of expression, as guaranteed by s. 2(b) of the *Charter*, and the related rights of freedom of conscience, peaceful assembly and association are some of the most important rights of a free and democratic society. However, freedom of expression, like all other *Charter* rights, is not an absolute right nor an unqualified one. The *Charter* does not give any person the legal right to unlawfully trample on the legal rights of others. Every *Charter* right must be balanced against other important values and rights.

[52] Simply put, freedom of expression does not extend to the point that the Protesters' activities can result in the denial of fundamental rights and freedoms to all those detrimentally affected by the blockade.

[53] While the Protesters involved in the blockade of the Bridge have every right to voice their criticism of government public health restrictions and/or vaccine mandates, they do not have the legal right, under the *Charter* or otherwise, to unilaterally block and impede access to the Bridge.

[54] Having reviewed the evidence and after hearing oral submissions, I have no hesitation in concluding that the harm caused by the Protesters' demonstrations and blockade far outweighs the value of the Protesters' right to express their views by illegal means. The Protesters' right to freedom of expression, assembly and association does not include violating the law or harming the people and businesses who reside and make a living in Windsor and everyone else who relies on the Bridge for those purposes.

B. Modified Test for a Statutory Interlocutory Injunction to Enforce Municipal By-Laws

[55] The APMA and the City also rely on s. 440 of the *Municipal Act, 2001* to enjoin the Protesters from continuing to violate the City's by-laws. Section 440, under the section "General Enforcement Powers," provides as follows:

> **Power to restrain**
>
> **440** If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.

[56] This section allows a municipality to bring an Application to restrain a person (or persons) from contravening its by-laws.

[57] I note that where a municipal authority seeks an injunction to enforce a by-law which it establishes is being breached, the courts will refuse the application only in exceptional circumstances: see *Newcastle Recycling Ltd.*, at para. 32.

[58] I agree with the submission of the Attorney General that absent a constitutional challenge to the by-laws in question, they are presumptively valid and remain in force and in effect. A consideration of the Protesters' *Charter* rights is therefore not required.

[59] It has been held that where an injunction is sought for the purpose of enforcing a municipal by-law, the traditional test for an injunction as set out above should be modified so that the first criterion (serious question to be tried) will be strongly emphasized to the exclusion of the other two criteria (irreparable harm and balance of inconvenience): see *Hamilton (City)*, at paras. 24, 28 and 31; *The Township of Amaranth*, at paras. 52-55.

[60] In this modified test, there is no need for the City to prove that it will suffer irreparable harm and there is no need to consider the balance of convenience because the public authority is presumed to be acting in the best interests of the public and a breach of the law is considered to be irreparable harm to the public interest: see The *Township of Amaranth*, at para. 54. However, in this modified test, the first criteria (serious issue to be tried) should be higher than the standard required when all three criteria are considered under the *RJR-MacDonald* test. A strong *prima facie* case must be established: *Hamilton (City)*, at para. 37.

[61] I find that a strong *prima facie* case has been established. It is clear that the unlawful actions of the Protesters, which include obstructing roads and the Bridge with vehicles, leaving their vehicles idling and blocking and impeding the public's access to the Bridge, are breaches of the City's by-laws. City By-law number 9148 (ss. 7 and 12) regulates traffic within City limits and prohibits people from obstructing roads with their vehicles and more generally prevents people from obstructing any highway. The parking of multiple vehicles and the presence of many persons whose express intent is to block traffic is a clear violation of that by-law. Vehicles left idling by the Protesters is also a clear violation of City By-law 233-2001, s. 2:

> 2. (1) No person shall cause or permit a Motor Vehicle, a Commercial Motor Vehicle or a Boat to idle for more than three (3) continuous minutes (180 seconds);

Conclusion

[62] I find that the APMA, the City and the Attorney General have established the criteria for an injunction both on the modified test applied for statutory injunctions and the traditional test for a common law injunction to prohibit the Protesters from establishing a blockade or in any way impeding access to the Bridge in Windsor, Ontario.

[63] This Order does not in any way prevent the Protesters from lawfully expressing their message and views as long as they do not prevent the free flow of traffic across the Bridge.

[64] Respecting the rights of others to use the Bridge while allowing the Protesters to express their message in a way that does not prevent or impede others from using the Bridge is what is required in a society governed by the rule of law.

Chief Justice G.B. Morawetz

Date: February 14, 2022

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Court File No.: CV-22-00030791-00[illegible]

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION v. JIM BOAK et al

[2174913/1]

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDSOR

SUPPLEMENTARY
SUPPLEMENTARY MOTION
RECORD

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